S. HRG. 99-188

# NOMINATION OF CURTIS E. VON KANN

## HEARING

BEFORE THE

## COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

NOMINATION OF

CURTIS E. VON KANN TO BE AN ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

JULY 23, 1985

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# NOMINATION OF CURTIS E. VON KANN

TUESDAY, JULY 23, 1985

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
*Washington, DC.*

The committee met, at 2:10 p.m., in room SR-301, Russell Senate Office Building, Hon. Charles McC. Mathias, Jr., presiding.

Present: Senators Mathias and Gore.

## OPENING STATEMENT OF SENATOR MATHIAS

Senator MATHIAS. The committee will come to order.

On July 11 of this year, President Reagan nominated Curtis E. von Kann of the District of Columbia to be an associate judge of the Superior Court of the District of Columbia for a term of 15 years. I would like to thank the nominee on behalf of the committee for the cooperation that he has given the members of the committee and the committee staff in the preliminary investigations that led to this hearing.

I would invite him to come to the witness table.

I should say, first of all, that this nomination has been the subject of a very careful review. In 1978, the committee adopted rule 8, which contains the requirements that must be met on all confirmations subject to committee evaluation. This rule requires that the committee conduct an inquiry into the nominee's experience, qualifications, integrity and suitability to serve in the position for which he has been nominated.

The committee believes, in the light of experience, that this rule ensures a thorough and yet a reasonable review of the nominee's background and qualifications.

It might be worth taking the time to recount for the record the steps that the committee has taken on this nomination prior to the hearing today. First, we asked for and the nominee supplied, detailed information on education, employment, professional achievements, as well as a complete financial statement.

I should note that the financial statement and biographical information are available for inspection by the public in the committee office.

In addition, the biographical information on the nominee will be placed in the record as a part of this hearing. I will direct the reporter to so include it.

[The information referred to follows:]

SENATE GOVERNMENTAL AFFAIRS COMMITTEE QUESTIONNAIRE

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names used.)

Curtis Emery von Kann

2. Position to which nominated:

Associate Judge
District of Columbia Superior Court

3. Date of nomination:

July 11, 1985

4. Address: (List current place of residence and office addresses.)

Residence - 2932 McKinley Street, N.W.
Washington, D. C. 20015

Office - 1800 M Street, N.W. (Suite 1060 North)
Washington, D. C. 20036

5. Date and place of birth:

September 18, 1942 Daytona Beach, Florida

6. Marital status: (Include maiden name of wife or husband's name.)

Single (Divorced)

7. Names and ages of children:

Marieke Johanna von Kann (Age 6)

8. Education: List secondary and higher education institutions, dates attended, degree received and date degree granted.

| Name of School & Address | From | To | Degrees |
|---|---|---|---|
| Wakefield Jr. H.S.<br>Arlington, Va. | 1954 | 1955 | (7th Grade) |
| Zama Jr. H.S.<br>Camp Zama, Japan | 1955 | 1956 | (8th Grade) |
| Wakefield Jr. H.S.<br>Arlington, Va. | 1956 | 1957 | (9th Grade) |

| | | | |
|---|---|---|---|
| Fayetteville H.S.<br>Fayetteville, N.C. | 1957 | 1959 | (10th & 11th Grade) |
| Wakefield H.S.<br>Arlington, Va. | 1959 | 1960 | (12th Grade) |
| Harvard College<br>Cambridge, Ma. | 1960 | 1964 | A.B. cum laude (1964) |
| Harvard Law School<br>Cambridge, Ma. | 1966 | 1969 | J.D. (1969) |

9. Employment record: List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.

Dates: Sept. 1969 - Dec. 1977
Employer: Hogan & Hartson
Location: Washington, D. C.
Title/Description: Associate (Litigation)

Dates: Jan. 1978 - Sept. 1982
Employer: Hogan & Hartson
Location: Washington, D. C.
Title/Description: Partner (Litigation)

Dates: Sept. 1982 - July 1983
Employer: Lillick, McHose & Charles
Location: Los Angeles, California
Title/Description: Of Counsel (Litigation)

Dates: Sept. 1983 - Present
Employer: Stein, Mitchell & Mezines
Location: Washington, D. C.
Title/Description: Of Counsel (Litigation)

10. Government experience: List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments, other than those listed above.

- Advisory Committee on Rules of Civil Procedure of the District of Columbia Superior Court (1970 - 1978)
- District of Columbia Judicial Planning Committee (1978 - 1982)
- District of Columbia Court of Appeals Committee on Unauthorized Practice of Law (1984 - Present)

11. Business relationships: List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

I have served a number of years as a class agent (fund-raiser) for my Harvard College Class (1964) and Harvard Law School Class (1969).

12. Memberships: List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable and other organizations.

| Name, Address, Type | Dates | Any Offices Held |
|---|---|---|
| Army R.O.T.C.<br>Harvard College<br>Cambridge, Mass.<br>(Military) | 1960-1964 | Battalion Executive Officer |
| Pre-Law Society<br>Harvard College<br>Cambridge, Mass.<br>(Educational) | 1961-1964 | Executive Chairman |
| Hasty Pudding Club<br>Harvard College<br>Cambridge, Mass.<br>(Social Club) | 1961-1964 | Member of various Theatrical Casts |
| Drama Society<br>Harvard Law School<br>Cambridge, Mass.<br>(Drama Group) | 1966-1969 | President |
| The Forum<br>Harvard Law School<br>Cambridge, Mass.<br>(Speakers Bureau) | 1967-1969 | Treasurer |
| Lincoln's Inn Society<br>Harvard Law School<br>Cambridge, Mass.<br>(Dining Club) | 1967-1969 | Bookkeeper |
| Harvard Club of Washington<br>1522 K Street, Suite 336<br>Washington, D. C. 20005<br>(Alumni Club) | 1964-Present | Director |

| | | |
|---|---|---|
| Harvard Law School Assoc.<br>of the District of Columbia<br>c/o John Mathis, Esquire<br>Baker & Botts<br>1701 Pennsylvania Ave., N.W.<br>Washington, D.C. 20006<br>(Alumni Assoc.) | 1969-Present | President |
| Bar Association of the<br>District of Columbia<br>1819 H Street, N.W.<br>Washington, D. C. 20006<br>(Bar Association) | 1969-Present | Young Lawyers Section Treasurer, Vice Chairman, and Member of the Executive Committee |
| American Bar Association<br>750 N. Lake Shore Drive<br>Chicago, Illinois 60611<br>(Bar Association) | 1969-Present | Member, Commission on Standards of Judicial Administration |
| Georgetown Workshop Theater<br>Christ Church<br>31st & O Streets, N.W.<br>Washington, D. C. 20007<br>(Little Theater Group) | 1971-Present | Member of various casts |
| The District of Columbia Bar<br>Woodward Building<br>Washington, D. C. 20005<br>(Bar Association) | 1974-Present | Co-Chairman of Rules Subcommittee of Litigation Section's Federal Practice Committee |
| The Barristers<br>c/o Iverson Mitchell, Esq.<br>1666 K Street, N.W.<br>Washington, D. C. 20006<br>(Lawyers Social Club) | 1977-Present | Member |
| Chevy Chase Players<br>Chevy Chase Community Center<br>Conn. Ave & McKinley St., N.W.<br>Washington, D. C. 20015<br>(Little Theater Group) | 1984-Present | Member of cast |
| Home & School Association<br>Lafayette Elementary School<br>Broadbranch Road &<br>Northhampton Street, N.W.<br>Washington, D. C.<br>(PTA) | 1984-Present | Member |

In addition, I have from time to time paid dues (or contributions), and thus become a "member" or "associate" or "friend" (different organizations use different terms) of the following mass-membership organizations:

- Smithsonian Institution - National Associate
- National Symphony Orchestra - Associate
- National Zoo - Friends of the Zoo
- Metropolitan Opera - Friends of the Met
- Corcoran Gallery of Art - Friends of the Corcoran
- American Automobile Association
- The Nature Conservancy
- The Environmental Defense Fund
- Natural Resources Defense Council

13. Political affiliations and activities:

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None.

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

In college (and law school, I believe) I was registered as a Republican. Thereafter I was a registered Democrat until early 1985, when I registered as an Independent. I have not rendered services to any political party or election committee during the last 10 years.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 10 years.

None.

14. Honors and awards: List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

| | | |
|---|---|---|
| Wakefield High School | - | Honor Society<br>Graduation Speaker |
| Harvard College | - | Dean's List, A.B. cum laude |
| U.S. Army | - | Army Commendation Medal |
| Harvard Law School | - | Dean Leininger Award for Best First Year Brief |
| | - | Ames Moot Court Semi-Finalist |

15. Published writings: List the title, publishers, and dates of books, articles, reports, or other published materials which you have written.

(1) "Fifty Useful Things to Know About Civil Litigation in the Superior Court," 38 D.C. Bar Journal 33 (1971).

(2) "The Impact of Court Reoganization upon the Superior Court for the District of Columbia," 54 F.R.D. 133 (1971).

(3) "The News Media and the Washington, D.C. Courts," 39 D.C. Bar Journal 18 (1972).

(4) "Standards Relating to Trial Courts," American Bar Association Commission on Standards of Judicial Administration (Member of the Drafting Committee) (1976).

(5) "Standards Relating to Appellate Courts," American Bar Association Commission on Standards of Judicial Administration (Member of the Drafting Committee) (1977).

(6) "The District of Columbia Court of Appeals and the A.B.A. Standards of Judicial Administration," District of Columbia Judicial Planning Committee (Chairman of Study Committee) (1977).

(7) "The District of Columbia Court of Appeals: Workload Problems and Possible Solutions," District of Columbia Judicial Planning Committee (Consultant) (1979).

16. Speeches: Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

During this period I have moderated and spoken at several bar association programs concerning recent amendments to rules of civil procedure, but I do not have a written record of my remarks.

17. Selection:

(a) Do you know why you were chosen for this nomination by the President?

No.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

I was fortunate to have a fine liberal arts education at Harvard College, a broadening two years of active duty as a lieutenant in the United States Army, and a solid professional education at Harvard Law School. Thereafter, in sixteen years of general litigation practice, I handled a wide variety of trial and appellate cases which have well acquainted me with rules of procedure, evidence, and the trial process. Through my work on the many professional projects, committees, and publications listed above, I have gained considerable familiarity with sound principles of judicial administration and opportunities for further improvement in the court system of the District of Columbia.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

Yes.

2. Do you have any plans, commitments or agreements to pursue outside employment, with our without compensation, during your service with the government? If so, explain.

No.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

None.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

None.

3. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

None.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

None.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.)

I will disqualify myself from consideration of any matter in which I or members of my immediate family have been personally involved either as a lawyer or otherwise, or in any other situation where disqualification is called for by the Canons of Judicial Ethics. In addition, in any matter coming before me in which one of the parties is represented by a former professional colleague or close personal friend, I will make all other counsel (or parties) aware of that relationship and will disqualify myself if requested to do so.

6. Do you agree to have written opinions provided to the Committee by the General Counsel of the agency to which you are nominated and by the Attorney General's office concerning potential conflicts of interest or any other legal barriers to your serving in this position?

Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No.

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details.

No.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

(1) Adoption of daughter Marieke J. von Kann; D.C. Superior Court, Family Division; Adoption No. A-302-78 (May 4, 1979).

(2) Divorce from Heidi Hemmen von Kann; D.C. Superior Court, Family Division, Domestic Relations Branch; C.A. No. D-850-84 (July 24, 1984).

4. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense?

No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

None.

F. QUESTIONS CONCERNING STATUTORY QUALIFICATIONS PURSUANT TO DISTRICT OF COLUMBIA COURT REFORM AND CRIMINAL PROCEDURE ACT OF 1970, SECTION 11-1501(b) OF THE D.C. CODE AS AMENDED

1. Are you a citizen of the United States?

   Yes.

2. Are you a member of the bar of the District of Columbia?

   Yes.

3. Have you been a member of the District of Columbia bar for at least 5 years? (Give year in which you became a member.)

   Yes -- 1969.

4. If the answer to No. 3 is "No" --

   (a) Are you a professor of law in a law school in the District of Columbia?

   (b) Are you an attorney employed in the District of Columbia by the United States or the District of Columbia?

   (c) Have you been eligible for membership in the bar of the District of Columbia for at least 5 years?

   (d) Upon what grounds is that eligibility based?

   Not Applicable.

5. Are you a bona fide resident of the District of Columbia?

   Yes.

6. Please state the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last 5 years.

| | |
|---|---|
| April 1977 - Sept. 1982 | 5750 Oregon Avenue, N.W.<br>Washington, D. C. 20015 |
| Sept. 1982 - July 1983 | 153 So. Bowling Green Way<br>Los Angeles, California 90049 |
| Aug. 1983 - July 1984 | 2714½ Poplar Street, N.W.<br>Washington, D. C. 20007 |
| July 1984 - Present | 2932 McKinley Street, N.W.<br>Washington, D. C. 20015 |

7. Have you maintained an actual place of abode in such area for at least 5 years?

   Actual places of abode are as shown in Answer F-6 above.

8. Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nomination Commission?

   No.

9. Have you been a member of either Commission within the last 12 months?

   No.

AFFIDAVIT

CURTIS E. VON KANN, being duly sworn, hereby states that he has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his knolwedge, current, accurate, and complete.

Curtis E. von Kann
Curtis E. von Kann

SUBSCRIBED and SWORN before me this 16 day of July, 1985.

Charlotte Cruger
Notary Public, D.C.

My Commission Expires March 14, 1987

Senator MATHIAS. The committee proceeded to review the nominee's biographical and financial information as well as a report submitted by the Office of Judicial Ethics. Following that, I reviewed the Federal Bureau of Investigation report that was prepared on Mr. von Kann, which was also reviewed by Senator Eagleton, the ranking minority member.

Finally, the nominee has been interviewed by designated committee staff members who have submitted a report to the committee containing the relevant information concerning qualifications for the position.

Mr. von Kann, according to the custom of the Governmental Affairs Committee, all witnesses at nomination hearings must give testimony under oath. So I will now ask you to rise and raise your right hand to take the oath.

Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Mr. VON KANN. I do.

Senator MATHIAS. Let the record show that the witness has been sworn.

## TESTIMONY OF CURTIS E. VON KANN, A NOMINEE TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Senator MATHIAS. Let me start out with some questions which are rather standard and that we ask of all nominees. Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging your responsibilities as a judge of the court to which you have been nominated?

Mr. VON KANN. No, Senator, I know of no such reason.

Senator MATHIAS. If confirmed by the Senate, would it be your intention—and in asking this question, none of us can look very far into the future—but insofar as you can look into the future, would it be your intention to serve the full 15-year term of office?

Mr. VON KANN. Yes, Mr. Chairman, that is my present intention.

Senator MATHIAS. We ask that because sometimes people will accept a position as a stepping stone, and we believe continuity in the courts is important and stability in the courts is important.

Have you ever been involved in the civil litigation or administrative or legislative proceedings of any kind as plaintiff, defendant, respondent, witness or party in interest which is directly or indirectly related to the office for which you are nominated?

Mr. VON KANN. No, sir, I have not.

Senator MATHIAS. Have you or any member of your immediate family ever been involved in any controversy or litigation with tax authorities of the Federal Government, the District of Columbia, or any State or local government?

Mr. VON KANN. No, Senator.

Senator MATHIAS. Is there anything of which you are aware in your background, either professional or personal, which might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. VON KANN. I am aware of nothing that would present a conflict of interest, Senator.

Senator MATHIAS. Assuming something that you may not be aware of at the moment should arise, something should come up in the future, how would you propose to deal with a potential conflict of interest during your tenure on the bench?

Mr. VON KANN. As I indicated in the questionnaire that I supplied to the staff, first of all, I would, of course, follow the American Bar Association Canons of Judicial Ethics, which are rather detailed concerning the circumstances under which a judge should disqualify himself from a particular matter.

I would intend to adhere to those in all instances. In particular, I would disqualify myself from handling any matter in which I or any member of my family had been a participant, either as a lawyer or a witness or party or in another capacity.

In addition, since I have practiced for a long time in the District of Columbia and know rather well a number of members of the bar, it would be my intention, should a matter come before me in which one of the parties is represented by a former colleague or individual who I have known quite well on a personal basis, to make that relationship known on the record to all concerned so that if any party or counsel wished to have a different judge hear the matter, they might express that preference, and I would honor it.

I found in my first few years at the bar that that was a practice that Judge James Belson and some others followed, and I think it is a good one, so that there can be no question later on that someone was unaware of the fact that one of the parties was represented by a former colleague of yours.

Senator MATHIAS. I think that it would be desirable that you would be willing to recuse yourself under those circumstances or at least to lay the facts before the parties. I am aware of situations in which judges have not done that, and as you suggest, it has caused great grief and unnecessary confusion.

I am moved to ask you one other question by some of the unhappy experiences that we have had in the recent past. Have you published any articles or other writings or speeches which could possibly embarrass you or the court or the President if they were republished or surfaced at some future time?

Mr. VON KANN. Senator, as I did advise the committee staff, I gave them a list of the several articles which I have published, and they were singularly unexcited by any of them. They are all on rather technical and, some might say, although I don't think so, dry aspects of court procedure, rules.

I don't believe there is anything in any of my published writings that would cause any embarrassment to anyone other than possibly somnolence.

Senator MATHIAS. I believe it was Cardinal Cushing who once wrote, "Oh that my enemies should write a book." Any writings that come along are always subject to some suspicion. But I hope nonetheless that that won't discourage you from continuing to write professionally.

Mr. VON KANN. I will even try to make them a little more interesting, if I can.

Senator MATHIAS. With your experience on the bench, why, perhaps you will be able to do that.

I notice that you graduated from Harvard in 1964, but you didn't graduate from the Harvard Law School until 1969. I wondered how you put in the intervening years.

Mr. VON KANN. After graduating from Harvard College, where I had been, among other things, an ROTC student, I entered the U.S. Army and served a period of 2 years of active duty as a lieutenant with an Army Calvary Squadron in Germany, where I am delighted to say I had the opportunity to have some responsibility and leadership at a fairly early age and the chance to meet a wide variety of people and a very worthwhile and broadening experience.

I returned in the summer of 1966 to Cambridge, and began 3 years at the Harvard Law School, finishing in 1969.

Senator MATHIAS. That is an interesting experience, not unlike my own. I left college somewhat earlier and served for several years in the Navy and then came back to law school. I think I probably approached law school with a greater degree of maturity and understanding as a result of the intervening years than I would have if I had had a more uneventful educational experience and had gone directly from undergraduate to graduate work.

Mr. VON KANN. I felt that would be the case, and I think it was in my situation, as well.

Senator MATHIAS. Tell us a little bit about anything in your education or anything in your professional experience that you feel would qualify you to sit as a judge on the superior court.

Mr. VON KANN. Senator, I grew up largely in the Washington, DC area since my father was stationed in Washington several times in the Army during the course of his career. I graduated from Wakefield High School, in Arlington, VA. And after the period at Harvard and the Army that we have just spoken of, I took the District of Columbia Bar in the summer of 1969 and in September of that year, joined the litigation department of the law firm of Hogan & Hartson in Washington.

Except for 10 months, I have spent all of the last 16 years living in, and practicing law in, the District of Columbia. During that period of time, I have handled a wide variety of litigation. I have always been a trial lawyer.

I have handled cases at the trial and appellate level in both the superior court, the U.S. district court, and courts of the surrounding jurisdictions, Maryland, and Virginia, and in some other locations, as well.

I had an opportunity in that period to have a fairly diverse litigation experience. I became interested in the trial process and have served a number of years as an instructor in civil litigation for the District of Columbia Bar Continuing Legal Education Program and at various bar association seminars.

I also became quite interested in the process of judicial administration and served for 3 years as a member of the American Bar Association Commission on Standards of Judicial Administration, helping the commission chairman and reporter draft the standards relating to trial courts and to appellate courts.

I also had the opportunity to serve 7 years as a member of the advisory committee on rules of civil procedure for the District of Columbia Superior Court. I have also served as a member of the District of Columbia Judicial Planning Committee and the District

of Columbia Court of Appeals Committee on Unauthorized Practice of Law.

I have been involved in a number of other bar association committees and projects. I served as a member of Mr. Horsky's court study committee that did a very detailed study of the District of Columbia court system, and also on the committee chaired by John Douglas that studied the workload of the District of Columbia Court of Appeals and the possible need for an intermediate court of appeals in the District.

So I feel fortunate that through my own litigation experience and also the work that I have done in bar association and other projects, I have had an opportunity both to learn the rules of procedure and of evidence that are involved in specific trials, but I think also to get a little broader perspective on the problems of administering the court system as a whole.

Senator MATHIAS. I think you bring an unusual experience to the court, both professional and in terms of your extracurricular activities with the bar association.

Has your litigation experience been primarily civil or criminal?

Mr. VON KANN. It has been primarily civil, although I have handled criminal cases at both the trial and appellate level. In fact, my very first jury trial was a court-appointed criminal case, and I have handled some other cases subsequently.

I recognize that no one comes to the superior court with expertise in all five divisions of the court and in every single aspect of its very broad jurisdiction, and I would certainly expect that——

Senator MATHIAS. Nobody that gets there before retirement age. [Laughter.]

Mr. VON KANN. That's right, Senator. I certainly recognize that there will be instances in which I will have to do some homework and bring myself up to speed in other areas of the law besides the civil one. But I feel prepared and willing to undertake that when those assignments are given to me.

Senator MATHIAS. Your legal experience has been very heavily centered on local courts and the Federal courts. With your work in the bar association bringing you into contact with judges, I wonder if you have had an opportunity to define what it is that we call judicial temperament. What is it that makes one lawyer a good judge when he is elevated to the bench and another lawyer less good as a judge? What is that elusive quality of character that we call judicial temperament?

Mr. VON KANN. Senator, I have thought about that a good deal since the President sent my nomination to the Senate, and it seems to me there are five principal components of judicial temperament. The first, I believe, is treating all of the persons who come into the court—litigants, lawyers, witnesses, jurors, clerks, bailiffs, spectators, all persons—with courtesy, civility, and dignity that they are entitled to as citizens.

Second, I think judicial temperament requires that a judge approach every case and every issue in every case without bias or prejudice; that he or she listen carefully and consider the arguments and the evidence presented by all parties and give that matter a full and fair and impartial consideration.

Third, I think a judge needs to be prepared. He needs to do his homework and should come onto the bench having brought himself up to speed and ready to immediately dig into the case. And I would say he should indicate by his example that he expects other participants in the process to do the same.

Fourth, a judge needs to run his trials efficiently; to take the bench on time, move the case along expeditiously without undue delay and without undue hurry, to try to strike that proper balance between efficiency and excessive speed.

Fifth, I think a judge needs to decide. That is, after all, one of the principal reasons for which judges are placed on the bench. I think it is undesirable to allow a matter to linger under advisement for months and months at a time. After you have given the matter your very best consideration, the parties are owed a prompt, reasoned, and fair decision so that they may get on with whatever further business they have, and you may get on to the next matter.

I think those five qualities would constitute, in my view, judicial temperament.

Senator MATHIAS. I think that is a very comprehensive definition of "judicial temperament," one with which I would very heartily agree. The point that is not made very often in considering this, is the point that the judge should take the bench on time. That seems a small thing, but it could be an important thing.

I used to practice before a court, one member of which was very undependable. Trials would be scheduled, hearings would be scheduled, witnesses would come in and out-of-town counsel would come in, sometimes from great distances, and one would arrive at the courtroom to be told by the bailiff that the judge had gone to the dentist or the judge had done this thing or the other thing. The kind of misery and confusion and turmoil that created simply didn't have to be. It was extraordinarily troubling. I think it did not help the reputation and the standing of the court.

So I am glad you have that among your qualifications.

I have always felt that one of the important roles of a judge was to act as an educator for younger lawyers. I am sure your father had the experience of having to counsel the younger officers in the Armed Forces. I know one of the interesting stories that they tell of Lord Nelson was the amount of time that he spent with the midshipmen on his flagship. Although here he was a naval hero, an admiral, he would spend an inordinate amount of the time with the midshipmen, not just talking to them about strictly the science of navigation, but talking to them about life and about what kind of young men they would grow up to be. That sort of laying on of hands is, it seems to me, extremely important in courts of law.

It can be done so differently. As a younger lawyer, I made my share of mistakes. I have been before judges who took great delight in calling attention to the errors, embarrassing young lawyers before their clients, before the jury, before the spectators.

I also remember a great judge in Maryland who sat most of the time in Rockville, Judge Prescott, Steadman Prescott, who was always the soul of courtesy. If a younger lawyer made a mistake, he would ask counsel to approach the bench and then out of the hearing of the rest of the courtroom, he would say, "Now, that's a

novel point of law that you have raised. That is one I haven't heard about before. Will you tell me about it?" And he would spin it out in such a gentle way, and yet he never let a point of law that he didn't know about go by. He was very firm on touching everything, but did it in such a courteous and civil manner that you never felt embarrassed or hurt or bitter or angry about it.

He was meticulous in his dealings with young lawyers, and I recall it with a great deal of appreciation and gratitude.

So I hope that you will see this as an important part of your role as a judge.

Mr. VON KANN. Senator, as I mentioned, I have, in the past, been an instructor for the D.C. Bar Program of Continuing Legal Education, and I have participated in a number of seminars and programs. I would hope to be able to continue that from time to time, to the extent my duties as a judge will permit me to have time to do that.

I would also like to be able to use the actual experience of a trial to perhaps provide some tips and pointers to younger lawyers about things that they might consider in order to improve their technique and skill.

I do think that it is sometimes a delicate question of how much assistance and involvement a judge can properly give during the course of an actual trial, and perhaps in some situations it may be appropriate to speak to the lawyers after the trial is over and offer some comments or observations or suggestions for them to consider in the future.

There are times, I believe, when it can be done in the course of a trial, as well, but that gets a little bit sensitive to some extent, to the extent that a repeated involvement of the judge with one or another of the parties can affect the adversarial system, in some instances.

But I agree with you that education and training and passing on whatever one can is an important part of the process.

Senator MATHIAS. Of course, there is also just the mere power of example, which is very important. This touches upon judicial temperament as well as education, the way a judge carries himself or herself, the way a judge appears off the bench as well as on the bench. All of these are factors that I think can have a great deal of influence on younger members of the bar and can impress upon them the kind of traditions that I think we would like to see preserved in our judicial system.

Mr. VON KANN. I think that is correct.

Senator MATHIAS. Before I turn to Senator Gore to see if he has any questions, let me just say that the committee is very pleased to have General von Kann here, as well as Dr. Mary Barber and Ms. Whitney Stewart. It is a pleasure to have you here, and we are glad that you could join us for this hearing.

Senator Gore.

Senator GORE. Thank you very much, Mr. Chairman. I have reviewed the nominee's files, and I don't have any questions about them.

I would like to ask, just as a matter of opinion, what is your view of a judge's role with respect to the prison overcrowding problem?

Mr. VON KANN. I think that is a very serious problem. As you are aware, Senator, it emanated from a decision by the U.S. District Court for the District of Columbia, not the superior court to which I have been appointed, in a case which I understand Judge Bryant has had before him for a long period of time, a number of years. There is a long history to that case which I am not personally familiar with. My understanding is that it has been pending at various stages 6 or 8 or 10 years.

It resulted, as you are certainly aware, in an order recently, which is undoubtedly going to require some substantial adjustments by the District of Columbia and perhaps Federal authorities in ways and which are not immediately apparent to me.

I do not know whether the District of Columbia has yet determined to appeal Judge Bryant's decision. If that happens, there may be a change in the court's order.

The problem is perhaps a short-term one in the sense that there seems to be general recognition that a new and enlarged facility is required in the District of Columbia, but it is going to be some period of years before it comes on line, and the problem, I presume, is one of filling the gap.

There are other facilities, as I understand it, to which prisoners sentenced in the Federal and State courts of the District of Columbia can be sent. As to the extent to which those facilities may be able to absorb some of the excess population, I am not presently able to speak.

My sense would be that this is a situation in which there will need to be very careful review of the alternatives, both by the District of Columbia authorities and by the Federal authorities, and hopefully, a solution can be found that will cover the period until the newer expanded facilities can be made available.

Senator GORE. Mr. Chairman, this nominee appears to have a judicial temperament. [Laughter.]

I appreciate the response. I have no further questions.

Mr. VON KANN. Thank you, Senator.

Senator MATHIAS. Senator Gore, that was a very interesting and a very thorny question.

The Federal penitentiary system is now about 25 percent over capacity. Congress worked through the revision of the Criminal Code with the inclusion of sentencing guidelines and the creation of a new Sentencing Commission, which I suspect—this is not a universal view—but I suspect it is going to increase the prison population, and we haven't appropriated a nickel in anticipation of the overcrowding which will result.

But that is a subject which is beyond the purview of this hearing this afternoon, thank goodness.

Senator GORE. Mr. Chairman, we have a similar problem at the State level in Tennessee, and there has been some discussion there about, among other things, the role of the judiciary in dealing with the problem. I was asking the question partly because of that and partly because of the very serious problem here in the District.

Senator MATHIAS. I think that is a pertinent question. The experience in Minnesota, for example, is useful, because there, they have a kind of sentencing commission, and I am told that in Minnesota, the sentencing commission takes a census of the State pris-

ons and how many slots there are available, and then in recommending the length of sentences, the severity of sentences, they take account of the facilities that are available for handling the number of prisoners that they contemplate will be sent to prison under this set of guidelines.

In other words, they attempt to tailor the number of inmates to the capacity of the prisons to hold them.

Senator GORE. And my understanding of the virtues touted for that system as opposed to an ad hoc consideration of this factor by individual judges is that the adjustments are uniform in nature and not haphazard, resulting in unwise and unjust leniency on the part of some defendants in some courtrooms.

Instead, it focuses upon an adjustment of the overall system with the relative severity of sentences retained in relationship to the seriousness of the crime for which the punishment has been imposed.

Senator MATHIAS. Under any circumstances, I think we are going to have to look at the question of adequate provision for prison facilities, and that is both on the local level and on the Federal level.

We are going to have to realize that when people say about a criminal "stick him away for 20 years," we are talking about anywhere from a half to three-quarters of a million dollars of public expenditure to maintain him in that 20 years. It would seem to focus the various responsibilities that face the members of the bench with regard to this problem.

Mr. VON KANN. Senator, if I might add one thing before we close, I would like to express my very great appreciation to the members of the staff of the committee, particularly Eileen Mayer, Gary Zizka, and Carol Fox, who have been most courteous and efficient and helpful to me in processing my confirmation papers and arranging all the things that had to be arranged. I am very grateful to them for that assistance.

Senator MATHIAS. Thank you very much. I share your sense of appreciation to them. We depend on their help.

Before we close this hearing, is there anyone in the room who wishes to say anything with respect to this nomination?

[No response.]

Senator MATHIAS. If not, the committee stands adjourned.

[Whereupon, at 2:44 p.m., the committee was recessed, subject to the call of the Chair.]

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